



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

September 29, 2008

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Steven Miller
Mail Code GC-51
Deputy Assistant General Counsel
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585



Re: Special Notice Letter for the Department of Energy
Westlake Landfill Site OUI, Bridgeton, Missouri

Dear Mr. Miller:

The United States Environmental Protection Agency ("EPA") has previously notified the United States Department of Energy ("DOE") of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9607(a), for the cleanup of the Westlake Landfill Site, OUI ("Site"), including all costs incurred by EPA in responding to releases at the Site. EPA is now contacting DOE ("you" or "DOE") in an attempt to resolve its responsibility at the Site. EPA also previously identified DOE as one of four potentially responsible parties ("PRPs") at the Site. Under the federal Superfund law, DOE and the other PRPs at the Site are responsible for the costs of cleaning up the Site. EPA has selected a remedial action for the Site, which is described in the Record of Decision ("ROD") issued by EPA on May 29, 2008. You have previously received a copy of the ROD by electronic mail.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between DOE, the other PRPs, and EPA for implementation of the response action. Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, EPA will not begin response action at the Site; however, EPA reserves the right to

take action at the Site at any time should a significant threat to the human health or the environment arise.

During this 60-day period, DOE and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day period ends on December 1, 2008. The 60-day moratorium will be extended for an additional sixty (60) days if the PRPs provide EPA with a "good faith offer" to conduct or finance the response action and reimburse EPA for its costs incurred to date. If EPA determines that your proposal is not a "good faith offer," you will be notified in writing of EPA's decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude on January 30, 2009. If settlement is reached between EPA and the PRPs within the 120-day moratorium, the settlement will be embodied in a Consent Decree for Remedial Action.¹ When approved by EPA and the U.S. Department of Justice ("DOJ"), the Consent Decree will then be lodged in federal court.

If a "good faith offer" is not received within sixty (60) days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the remedial action and pursue a cost recovery claim under 107 of CERCLA against you and/or the other PRPs; or (2) EPA may issue a Unilateral Administrative Order ("UAO") to you and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring you or them to perform the work described in the ROD. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

At this site, EPA does not believe that there are any PRPs who meet the definition of an "orphan" within the meaning of EPA's 1996 Orphan Share Guidance; however, if you, either individually or with other PRPs, enter into a settlement for remedial action with EPA and provide sufficient information about the existence, liability, and relative shares of responsibility of insolvent and defunct PRPs, EPA will analyze the information and determine whether to consider the shares of these parties in the amount of EPA's past costs and future oversight costs to recover in such settlement.

Good Faith Offer

A proposed Consent Decree is enclosed to assist you in developing a "good faith offer." The State of Missouri has notified EPA that it intends to be a party to this Consent Decree; therefore, the draft Consent Decree accommodates that intent. An electronic copy of this document will be provided separately to you and to Christina Richmond at the Department of Justice. As indicated, the 60-day moratorium triggered by this letter is extended for 60 days if the PRPs submit a "good faith offer" to EPA. A "good faith offer" to conduct or finance the

¹ The PRPs have chosen to perform the Remedial Design pursuant to an amendment to the Settlement Agreement and Order on Consent executed previously with EPA.

remedial action is a written proposal that demonstrates your qualifications and willingness to perform such work and includes the following elements:

- A statement of DOE's willingness and financial ability to implement the requirements of the ROD and proposed Consent Decree and that provides a sufficient basis for further negotiation;
- A demonstration of DOE's technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
- A detailed statement of work or work plan identifying how you intend to proceed with the remedial action;
- A statement of DOE's willingness to reimburse EPA for costs EPA will incur in overseeing your implementation of the remedial action;
- A response to the proposed Consent Decree. If your offer contemplates modifications to the Consent Decree, please make revisions or edits to the Consent Decree and submit a version showing your proposed modifications to it (a redline/strikeout version);
- A list identifying each party on whose behalf the offer is being made including name, address, and telephone number of each party; and,
- The name, address, and phone number of the party who will represent DOE in negotiations.

Demand for Reimbursement of Costs

With this letter, EPA demands that DOE reimburse EPA for its unreimbursed costs incurred to date, and encourages you to voluntarily negotiate Consent Decree in which DOE and other PRPs agree to perform the remedial action.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. EPA is seeking to recover from DOE and other PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total response costs identified from June 1, 2008, through August 31, 2008, are \$36,366.76. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from DOE and other

PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed.²

PRP Information

To assist PRPs in negotiating with EPA concerning this matter, EPA is informing you of the names of other PRPs to whom it is sending this Notice. Those other PRPs include the following:

Bridgeton Landfill, LLC
Cotter Corporation
Rock Road Industries, Inc.

EPA recommends that all the PRPs meet to reach consensus among themselves regarding allocation of responsibility. Third parties could be available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. This Administrative Record is located at the Bridgeton Public Library and has been available to the public for inspection and comment. The Administrative Record is available for inspection and comment at the Records Center, EPA Region 7. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact EPA as soon as possible to indicate your willingness to participate in future negotiations concerning this Site. If EPA does not receive a "good faith offer" by December 1, 2008, EPA will assume that DOE does not wish to negotiate a resolution of its liabilities in connection with the Site and that DOE has declined any involvement in performing the response activities.

² The EPA sent the PRPs a bill for costs from April 1, 2007 through May 31, 2008 on September 17, 2008.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the remedial action selected for the Site, should be sent to:

Cheryle Micinski
Office of Regional Counsel
U.S. EPA
901 North 5th Street
Kansas City, Kansas 66101
913-551-7274
micinski.cheryle@epa.gov

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

In addition, EPA has notified the Federal Natural Resource Trustee of its intention to perform or enter into negotiations for the performance of response actions at the Site.

If you have any questions regarding the technical aspects of this letter, please contact Daniel Wall, Remedial Project Manager, at 913-551-7710. Please direct legal questions to Ms. Micinski.

My staff and I look forward to working with you during the coming months.

Sincerely,

A handwritten signature in black ink, appearing to read "Cecilia Tapia", enclosed within a circular stamp or seal.

Cecilia Tapia, Director
Superfund Division

Enclosures: Draft Consent Decree for Remedial Action
Draft Statement of Work for Remedial Action
Cost Summary

cc: Tim Dugan, Office of the Attorney General, State of Missouri
Christina Richmond, U.S. DOJ
Robert Stewart, Natural Resources Trustee
Sarah Himmelhoch, U.S. DOJ